CIVIL REFERENCE.

Before Mr. Justice Wilson and Mr. Justice Porter.

1886 *July* 10

FAJALEH ALI MIAH (PLAINTIFF) *v.* KAMARUDDIN BHUYA (DEFENDANT.)*

Compromise of suit—Compromise extending beyond the terms of the suit—Civil Procedure Code (Act XIV of 1882), *s.* 375—*Compromise, Modification of terms of.*

The only compromise which a Court can in any case be bound under s. 375 of the Code of Civil Procedure to enforce, is one which adjusts, wholly or in part, the suit; matters going beyond the suit cannot, if included in a compromise, be so enforced.

A Court refusing to grant a decree on a compromise going beyond the suit, cannot however grant a decree modifying the terms of the proposed compromise, but must leave the parties to proceed with the suit as they may be advised.

REFERENCE under s. 615 of the Code of Civil Procedure.

The plaintiff sued on a bond executed by the defendant under which the latter had borrowed from the former Rs. 10 agreeing to pay interest at the rate of nine pie per mensem, or Rs. 56 four annas per cent. per annum. The total amount of principal and interest due under the bond at the time of suit amounted to Rs. 29.

On the day of hearing, the defendant entered into a compromise with the plaintiff, whereby he bound himself to pay Rs. 22 in satisfaction of the whole claim including costs, agreeing to pay such amount on the 5th Magh 1292, B.S., or on failure so to do, to pay interest at the rate of Re. 1 per diem on the whole amount. A petition embodying these terms was filed, and the Court passed a decree in accordance therewith, contingent on the opinion of the High Court as to (1) whether the Civil Courts can take cognizance of a compromise entered into by parties in a pending case whereby one of such parties agrees to pay a usurious rate of interest, and whether a decree can be passed thereon under s. 375 of the Code of Civil Procedure; and (2) whether the Civil Courts have power to refuse to grant

* Civil Reference No. 2 A of 1886, made by Baboo Khetra Mohan Mitra, Munsiff of Begamgunge, dated the 18th of January 1886.

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a decree upon such a compromise, granting, however, a decree modifying such terms:—

No one appeared on the reference for either party.

The opinion of the Court (WILSON and PORTER, JJ.) was as follows:—

The only compromise which a Court can in any case be bound under s. 375 of the Civil Procedure Code to enforce is one which adjusts the suit wholly or in part—not one which goes beyond the suit.

The compromise proposed in the present case embodies a new contract, much wider in its scope than the mere adjustment of the claim in suit. We think, therefore, that the Small Cause Court Judge is not bound to enforce it, and, if not so bound, he is certainly right to refuse.

He cannot, however, modify it. He must leave the parties to proceed with the case as they may choose.

T. A. P.

APPELLATE CIVIL.

Before Mr. Justice O'Kinealy and Mr. Justice Agnew.

1886
May 28.

CHAIRMAN OF THE NAIHATI MUNICIPALITY (1ST PARTY, CLAIMANT) *v.* KISHORI LAL GOSWAMI (2ND PARTY, CLAIMANT) AND THE COLLECTOR UNDER ACT X OF 1870.*

Bengal Municipal Act (Beng. Act V of 1876,) *s.* 32—*Municipal Corporations—Commissioners—Right of way—Compensation—Land Acquisition Act, X of* 1870.

Section 32 of Act V of 1876, the Bengal Municipal Act, enacts that "all roads, bridges, embankments, tanks, ghats, wharves, jetties, wells, channels and drains in any Municipality (not being private property), and not being maintained by Government or at the public expense, now existing, or which shall hereafter be made, and the pavements, stones and other materials thereof, and all erections, materials, implements and other things provided therefor, shall vest in, and belong to, the Commissioners."

Held, that the word "roads" in this section does not include the soil beneath the roads.

* Appeal from Original Decree No. 292 of 1884, against the decree of H. Beveridge, Esq., Judge of 24-Pergunnahs, dated the 2nd of August 1884.